

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RON MOWDY, JOAQUAN HARVEY,
individually named and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BENETO BULK TRANSPORT, KENAN
ADVANTAGE GROUP, INC.,

Defendants.

Case No. 06-cv-05682 EMC

**[PROPOSED] ORDER GRANTING
JOINT REQUEST TO HOLD CLASS
MEMBERS COVERED BY AND
BOUND TO THE SETTLEMENT**

1 Before the Court is the parties' Joint Request to Hold Class Members Covered by and
2 Bound to the Settlement.

3 WHEREAS, this Court previously granted final approval to the class and collective action
4 settlement (the "Settlement"), and entered a judgment in this matter;

5 WHEREAS, this Court retained continuing jurisdiction over the interpretation,
6 implementation and enforcement of the Settlement and all orders entered in connection therewith
7 to the fullest extent necessary or convenient to enforce and effectuate the terms of the Settlement
8 and the matters provided for therein;

9 WHEREAS, pursuant to the Settlement Agreement in this case, the California Settlement
10 Class Members are defined as all persons employed as drivers by Defendants in California
11 between September 15, 2002 and October 31, 2011 who did not opt-out of the Settlement;

12 WHEREAS, under the terms of the Settlement Agreement, the "FLSA Plaintiffs" consist
13 of all persons employed as drivers by Defendants in California between September 15, 2002 and
14 October 31, 2011, who either (a) have previously opted-in to this action, as reflected in Docket
15 Nos. 130 and 131, and did not opt-out of the settlement or (b) opted-in to the Settlement by
16 cashing their Settlement Award check;

17 WHEREAS, on April 23, 2012, Gilardi & Co. LLC (the "Settlement Administrator")
18 issued settlement checks to 1,594 participating California Settlement Class Members;

19 WHEREAS, Settlement Award checks for seven Class Members were withheld until June
20 14, 2012 because confirmation of their Social Security Numbers was required, and seven of the
21 Settlement Award checks initially issued on April 23, 2012 were later re-issued to Class
22 Members at their request;

23 WHEREAS, the backs of the Settlement Award checks contained language explaining
24 that, by endorsing the checks, Class Members were opting-in to the FLSA portion of the
25 Settlement and agreeing to release their claims arising under the FLSA;

26 WHEREAS, pursuant to this Court's Order, Class Members had 120 days from the date of
27 issuance to cash their settlement check, and thus the deadline for cashing settlement checks that
28 were issued on April 23, 2012 was thus August 21, 2012;

1 WHEREAS, there are ten Settlement Award checks that were reissued or initially
2 withheld that have not yet been cashed, and that will expire on October 13, 2012;

3 WHEREAS, according to the Settlement Administrator's records, 1,408 Class Members
4 have cashed their Settlement Award checks, and an additional 16 Class Members have not cashed
5 their Settlement Award checks but previously opted-in to the FLSA portion of this action;

6 WHEREAS, the Settlement Administrator has provided a complete list of the 1,601
7 California Settlement Class Members, as well as subsections listing the 1,424 total FLSA
8 Plaintiffs;

9 WHEREAS, the parties and the Settlement Administrator have complied with all court-
10 approved notice and settlement distribution procedures;

11 Having considered the Joint Request to Hold FLSA Plaintiffs Covered by and Bound to
12 the Settlement, the Declaration of Bernella Osterlund in Support of the Joint Request, and all
13 other supporting papers,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

15 The Joint Request to Hold FLSA Plaintiffs Covered by and Bound to the Settlement is
16 hereby granted. All California Settlement Class Members and FLSA Plaintiffs, who are listed in
17 Exhibit A to the Declaration of Bernella Osterlund, are hereby covered by and bound to the
18 Settlement. In addition, any of the remaining ten Class Members whose Settlement Award
19 checks are set to expire on October 13, 2012 shall become an FLSA Plaintiff in the event he or
20 she cashes such check (or any subsequently reissued Settlement Award check).

21
22 **IT IS SO ORDERED.**

23
24 Dated: 9/7/12

